IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

Crl.MC.No. 11 of 2007()

CC.149/2006 of CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM

.....

PETITIONER:

SUJATHA SREEKUMAR,
W/O.SREEKUMAR, `POURNAMI',
T/C 5/1666, TEMPLE ROAD, AMBALAMUKKU,
PEROORKADA P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.SABU S.KALLARAMOOLA

RESPONDENTS:

---

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. N.S.SABU, KAILAS, T/C 3/326,
MUTTADA P.O., THIRUVANANTHAPURAM.

R1 BY PUBLIC PROSECUTOR SRI. S.U. NAZAR
R2 BY ADV. SRI.S.VENUGOPAL
SRI.GOPAKUMAR R.THALIYAL

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

Crl.M.C.No. 11 of 2007

- -

Dated this the 30th day of May, 2007

O R D E R

The petitioner is the accused in a prosecution under Section 420 I.P.C. Proceedings have been initiated on the basis of a complaint filed by the respondent herein, admittedly a friend of her husband. It is alleged in the complaint that the complainant had advanced an amount of Rs.2,42,000/- to the petitioner and for discharge of the said liability a cheque was handed over by the accused to the complainant. Admittedly there are other transactions between the complainant and the husband of the petitioner and the husband of the petitioner had issued cheques to the complainant. The relevant averments appear in paragraph 2, which I extract below for the sake of clarity in reproduction.

> "While demanded the said amount, accused has issued a cheque bearing No.565071 with corrected date on 18.2.2005 and instructed to present for collection. The complainant has noticed the signature on the cheque which is akin to her husband signature, demanded for a fresh cheque of the accused. She has managed to believe the complainant that the said cheque would encash while present. The complainant has believed the words of the accused."
>
> (emphasis supplied)

2. The petitioner complains that there was no transaction whatsoever between her and the complainant. The transaction was always between the husband of the petitioner and the complainant. Annex.I is the copy of three cheques, all issued by the petitioner's husband to the complainant. First of those is the subject matter of the present complaint. The other two are subject matters of other complaints against the husband of the petitioner by the complainant. The learned counsel for the petitioner submits that there is no cogent, specific or reasonable averment which can attract culpability against the petitioner herein.

3. It is important to ascertain what precisely is the allegation. There is no specific allegation that the accused made a representation that the cheque is being issued by her from her account to the complainant. The complainant could not obviously had assumed so. The other cheques in Annex.I clearly show that they were also issued by the husband of the petitioner to the complainant. In fact the averments extracted above would indicate that the complainant knew even at the time when the cheque was handed over that the signature in the cheque is that of the husband of the petitioner. It appears to be improbable and artificial, nay impossible that the complainant could have entertained any impression on the basis of the

alleged misrepresentation that the cheque was being issued by the petitioner in her account to the complainant. Such a possibility does not appear to be available and the averments extracted above do not at all indicate such an allegation.

4. The said cheque, it is submitted, was dishonoured by the bank on the ground that the account is closed. This may justifiably give rise to a cause of action against the husband under Section 138 of the N.I. Act. I am at a loss to understand how these allegations can justify any indictment of the petitioner for the offence under Section 420 I.P.C.

5. Consideration of the totality of circumstances does inevitably lead the court to the conclusion that the attempt now made by the petitioner is nothing but a transparent abuse of process of court. I find merit in the submission that the attempt is made to rope in the petitioner also into the controversy so that the petitioner and her husband will settle all disputes under duress.

6. The respondent has filed a statement. He relied on Annex.II, which only shows that earlier a complaint was withdrawn as compounded. In that, both the petitioner and her husband were arrayed as accused. The mere fact that the petitioner had faced such a similar indictment along with

her husband earlier or that the said case was compounded cannot at all lead this Court to any interference or perception of indication of culpability of the petitioner in the present indictment. The interests of justice demand that this criminal prosecution is put to premature termination by invoking the powers under Section 482 Cr.P.C.

7. This Crl.M.C. is hence allowed. C.C.No. 149 of 2006 pending before the Chief Judicial Magistrate Court, Trivandrum against the petitioner is hereby quashed.

(R. BASANT)
Judge

tm